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No. 82-167

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

COMMANDER GEORGE C. CHAPPELL, et al.,

Petitioners,

v.

VERNON WALLACE, et al.,

Respondents.

BRIEF IN OPPOSITION

JOHN MURCKO, Esq.

506 Fifteenth Street
Suite 300
Oakland, California 94612
Telephone: (415) 465-2241

Counsel for Respondents

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No. 82-167

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BRIEF IN OPPOSITION

The respondents respectfully request that this court deny the Petition for a Writ of Certiorari, seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 661 F.2d 729.

STATEMENT OF THE CASE

Respondents are all Black Americans who enlisted in the United States Navy and who were assigned to the Weapons, Supply and Engineering Divisions aboard the U.S.S. Decatur (DDG 31). The command of this landing ship is essentially made up of white officers and non-commission officers. On August 24, 1978 after years of discrimination by the petitioners, respondents filed suit in the United States District Court for the Southern District of California for unlawful discrimination by petitioners because of the color, race and nationality of the respondents. Respondents were discriminated against in the schools

they were allowed to attend. They were discriminatorily kept out of skilled ratings, and placed into the dirtiest and most dangerous assignments aboard the ship. They were also usually given poor quarterly marks and evaluations, were unlawfully processed for discharge and unlawfully given excessive punishment at Captain's Mast for minor transgressions.

Respondents were kept in a condition of servitude and dependency in violation of their constitutional rights to equal protection, and 42 U.S.C. §1985(3). As a result of the petitioners' malicious and discriminatory acts, respondents were not able to develop careers in the Navy and were unlawfully discharged. Respondents sought declaratory relief, money damages, and injunctive relief against the unlawful discrimination.

The district court for the Southern District of California, the Honorable Leland Neilsen, a former Navy Commander, granted a motion to dismiss the complaint for failure to exhaust remedies, for military immunity and for unreviewability of internal military decisions.

The United States Court of Appeal for the Ninth Circuit reversed the District Court on the basis that military decisions are reviewable if they involve a violation of a recognized constitutional claim and second that military officers enjoy a qualified immunity for acts committed incident to military service. But before the immunity does apply the court must apply the four Mindes factors to determine if the decision is reviewable. See page 18a of Appendix A attached to Petitioner's Petition for a Writ of Certiorari (hereafter Appendix A).

REASONS WHY THE WRIT SHOULD BE DENIED

The main agreement of the petitioner is that military officers and non-commissioned officers should enjoy absolute immunity for violation of the rights of servicemen and servicewomen. See Petition for Writ of Certiorari, page 14. All of their arguments concerning special factors counseling hesitation, alternative remedies to servicemen, reviewability, and a special relationship follow this argument.

But the United States Attorney seeks to extend the law of Feres v. United States, 340 U.S. 135 (1950) to all constitutional claims of service personnel. It would deprive service personnel of any constitutional rights by declaring that any violations of civil rights of service personnel by military officers or non-commissioned officers are immune from suit including damage actions and declaratory relief and injunctive relief.

1. The United States Supreme Court and numerous federal courts of appeal have held that internal military decisions are reviewable where they involve violation of constitutional rights.

Violations of Fifth and Sixth Amendment rights of service personnel at courts-martial are reviewable. Burns v. Wilson, 346 U.S. 137 (1953) (denial of right to counsel, due process rights of a fair trial, of a forced confession, of manufactured evidence, and of coerced witnesses); O'Callahan v. Parker, 395 U.S. 258 (1969) (denial of Fifth Amendment right to indictment by a grand jury and Sixth Amendment right to a jury trial); Relford v. Commandant, 401 U.S. 355 (1971) (denial of right to jury trial); Noyd v. Bond, 395 U.S. 683 (1969) (denial of due process by failing to follow federal

statutes and military regulations in post-court-martial review actions); Daigle v. Warner, 390 F.2d 358 (9th Cir. 1974) (denial of right to attorney at a summary court-martial); Mitchell v. Swope, 224 F.2d 365 (9th Cir. 1977) (right to counsel); Kaufman v. Secretary of the Air Force, 415 F.2d 991 (D.C. Cir. 1969) (denial of right against self-incrimination and right to cross-examine witnesses); United States v. Augenblick, 393 U.S. 348 (1969).

Federal courts also have jurisdiction in suits by members of the military against their commanding officers for violation of their rights against unreasonable searches and seizures guaranteed by the Fourth Amendment. Committee for GI Rights v. Callaway, 518 F.2d 466, 474 (D.C. Cir. 1975) ("We recognize, of course that GIs are entitled to the protection of the Fourth Amendment as are all other American citizens."); Kaufman v. Secretary of the Air Force, 415 F.2d 991, 996 (D.C. Cir. 1969).

Jurisdiction also exists for suits by military personnel against their superiors for violation of their rights to freedom of speech and press guaranteed by the First Amendment. Parker v. Levy, 417 U.S. 733 (1974) (prohibiting the making of statements to other enlisted personnel concerning the Vietnam War); Brown v. Glines, 444 U.S. 348 (1960) (review of military decision for distribution of literature); Secretary of the Navy v. Averech, 418 U.S. 676 (1974) (prohibiting the distribution of literature to enlisted people); Committee for GI rights v. Callaway, 518 F.2d 466 (D.C. Cir. 1974) (right to have posters in barracks); Huff v. Secretary of the Navy, 575 F.2d 907 (D.C. Cir. 1978) (Marine Corps enlisted enjoined their superior from prohibiting their distribution of petitions to Congress on the military base); Cortright v. Resor, 325 F.Supp. 797 (E.D.N.Y. 1971)

rev'd on other grounds, 447 F.2d 245 (2nd Cir. 1971) cert. denied 405 U.S. 965 (1972) (signing and circulating petitions); Yahr v. Resor, 431 F.2d 69 (4th Cir. 1970) cert. denied 401 U.S. 982 (1971) (distribution of literature on base); Dash v. Commanding General, 307 F.Supp. 849 (1969) aff'd per curiam 429 F.2d 427 (4th Cir. 1970) cert. denied 401 U.S. 981 (1971) (holding an open meeting on base).

Military personnel also can bring actions against their commanders for violations of their First Amendment right to be free of the attempts of the military to establish a religion. Anderson v. Laird, 466 F.2d 283 (D.C. Cir. 1971) (illegal to require servicemen to attend church services).

The court in Cortright v. Resor, 447 F.2d 245, 254-5, stated:

> "We are far from holding that under no circumstances could a civilian court interfere with a transfer order or prescribe other relief if that were needed to prevent abridgment of a soldier's first amendment rights."

See also, Friedman v. Froehlke, 470 F.2d 1351 (1st Cir. 1972); Hugh v. Seaman, 493 F.2d 298 (4th Cir. 1974); Miller v. Ackerman, 488 F.2d 920 (8th Cir. 1973) (denial of right to wear wig by commanding officer is arbitrary, irrational and unreasonable action).

The federal courts have recognized jurisdiction of suits by military personnel against their military superiors for violations of due process rights of servicemen at administrative hearing. Hagopian v. Knowlton, 470 F.2d 201 (2nd Cir. 1972) (denial of right to hearing); Wasson v. Trowbridge, 382 F.2d 807 (2nd Cir. 1967) (same); VanderMolen v. Stetson, 471 F.2d 617 (D.C. Cir. 1977) (denial of right to attorney, to notice, to call and to cross-examination of witnesses); Grimm v. Brown, 449 F.2d

654 (9th Cir. 1971) (denial of a "fair and impartial hearing"). Jurisdiction also exists when Navy officials fail to comply with their own regulations. Kimball v. Commandant, Twelfth Naval District, 482 F.2d 88 (9th Cir. 1970) (hardship discharge); Bluth v. Laird, 435 F.2d 1065 (4th Cir. 1970) (denial of deferment); United States ex rel. Brooks v. Clifford, 409 F.2d 700 (4th Cir. 1969); Feliciano v. Laird, 426 F.2d 424 (2nd Cir. 1971); Nixon v. Secretary of the Navy, 422 F.2d 934 (2nd Cir. 1970); Pitcher v. Laird, 421 F.2d 1972 (5th Cir. 1972).

Finally, we come to violations of equal protection as they are embodied in the due process clause of the Fifth Amendment. The United States Supreme Court held that jurisdiction exists in a suit by a naval lieutenant against his superiors concerning denial of due process and equal protection guarantees by failure to promote officers. The court had jurisdiction and decided the issue of equality of treatment by sex in an issue concerning members of the military. Schlesinger v. Ballard, 419 U.S. 498 (1975).

But even more important, in Alvarez v. Wilson, 431 F.Supp. 136 (N.D. Ill 1977) the court held that a black naval lieutenant can sue his naval superiors in an action for damages where the complaint alleged violation of constitutional rights under the Fifth Amendment for racial discrimination.

The petitioner would wipe all of these cases clean from the tableau rosa of history. This would result in the sterile declaration that service personnel have no constitutional rights, that military commanders can do what ever they please and that the executive department is free from the balance of power that was so precisely guarded by the courts since Marbury v. Madison, 1 U.S. 137 (1803).

Finally as the Court of Appeals below stated, "In addition, society as a whole has an interest in deferring federal officials from knowingly violating individuals' constitutional rights." Page 6a Appendix A.

Thus, the first argument of the petitioner concerning review of military decisions is without basis in law.

2. Under the decision of the Court of Appeals the review of the decision is so narrow that it is still an extreme disadvantage to service personnel and protects the discretion of military commanders.

The court stated that plaintiff must show a violation of a constitutional right and exhaustion of internal military remedies. Then and only then will the court apply a balancing test which includes the extent to which military functions and military discretion or expertise is involved. See Page 7a-8a of Appendix A.

This decision protects the military expertise and allows the courts to balance in favor of the military where it determines that military discretion is primary.

This is the same narrow test that was applied in other circuits. Mindes v. Seaman, 453 F.2d 197 (5th Cir. 1971). In fact, the United States Supreme Court also appeared to use the balancing test in reviewing military decisions when it reviewed the military duty assignment in Brown v. Glines, 444 U.S. 348 (1980). There it recognized that service personnel do have a constitutional right to distribution of literature, but that prior approval must be obtained before circulating a petition on base. The balancing test was used there to protect the rights of service personnel and military discretion.

The Court of Appeal is following the precedents bequeathed to it by the high court in stating that

military decisions involving constitutional violations are subject to a limited review.

But the petitioners are attempting to change the law by eliminating review and by eliminating the balancing test from all military actions. This is an unwarranted attempt to turn back the clock and institute rule by fiat instead of rule by law.

3. The constitution does not warrant a grant of absolute immunity to military officials, officers and non-commissioned officers, for violation of constitutional rights, as the petitioners argue.

In Dinsman v. Wilkes, 53 U.S. 390 (1951) the Supreme Court held that military officials exercising discretion possess a qualified immunity from liability for damages. A Navy commander may never "inflict any severer or harsher punishment than he, at the time conscientiously believed to be necessary to maintain discipline and due subordination in his ships. The most despotic powers with which law clothes him, for the time, and which are absolutely necessary for the safety and efficiency of the ship, make it more especially his duty not to abuse it. And if, from malice to an individual, or vindictive feeling, or a disposition to oppress, he inflicted punishment beyond which, in his sober judgment, he would have though necessary, he is liable to this action." Id. at 429.430.

Likewise, in Larson v. Domestic and Foreign Commerce Corporation, 337 U.S. 682 (1949), this court held that actions by federal officers beyond their statutory power are ultra vires and may be the object of specific relief.

Also federal officers action which is exercised in a manner that is constitutional void can be made

the basis of a suit against the officer as an individual. Dugon v. Clark, 372 U.S. 609, 621-33 (1963). The purpose of the Civil Rights Acts and federal actions under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) is "to give a remedy to parties deprived of constitutional rights, privileges, and immunities by an official's abuse of his position." Scheuer v. Rhodes, 416 U.S. 232, 243 (1974).

In its most recent decision the Supreme Court only allowed qualified immunity to federal officials from liability for damages in Bivens- type actions alleging constitutional violations. Butz v. Economou, 438 U.S. 478 (1978). In Economou, the Supreme Court referred to its opinion in Dinsman v. Wilkes, supra, which would indicate to the military service it would not preclude recovery. 438 U.S. at 492-494.

The doctrine of sovereign or absolute immunity only applies to the executive branch as a defense to civil damage suits for "defamation and kindred torts." Barr v. Matteo 360 U.S. 564, 569; to the members of Congress for speech, debates, reports or actions done in session. Ibid, and to the adjuciative session of judges. Pierson v. Ray, 386 U.S. 547 (1967).

There is no need for this absolute immunity to apply to routine military decisions in a non combat situation during peacetime. First, service personnel should not be treated as second class citizens and be denied all constitutional rights in the military service. It would impede the motivation of millions of service persons. Second, the limitation on the exercise of the discretion of the military officer is minimum. He has the protection of the Mindes factors. Also, he may bring a motion for summary judgment where there is no genuine issue of bad faith. Poller v. Columbia Broadcasting System, 368 U.S. 464 (196).

The petitioners do not enjoy sovereign immunity for violation of constitutional rights. Their actions are violations of the equal protection clause, federal statutes, and naval regulations outlawing discrimination. Their actions are also ultra vires. They only enjoy a qualified immunity.

4. Finally, the petitioners argue that this appears to be the first case in which servicemen have been allowed to seek damages for alleged constitutional violations incident to military service. See Petition for A Writ of Certiorari, page 15.

But this is a bold face distortion of the law. The United States Supreme Court in Dinsman v. Wilkes, 53 U.S. 414, 427, a case involving a Navy commander stated:

> "If they believed, from the whole testimony, that the defendant, in all the acts complained of, was actuated alone by an upright intention to maintain the discipline of his command and the interest of the service in which he was engaged, then the plaintiff is not entitled to recover. But if they find that the punishment of the plaintiff was in any manner or in any degree increased or aggravated by malice or a vindictive feeling towards him on the part of Captain Wilkes, or by a disposition to oppress him, then the plaintiff is entitled to recover."

Money damages are available in racial discrimination cases brought against private citizens and state officials under 42 U.S.C. 1981, 1983 and 1985. Sullivan v. Little Hunting Park, Inc., 396 US. 229 (1969); McCrary v. Runyon, 515 F.2d 1082 aff'd, 427 U.S. 160 (1976).

An official is subject to an action for damages under the Fourteenth Amendment for racial discrimination. Maybanks v. Ingrahan, 378 F.Supp. 913 (D.C. Pa. 1974). Compensatory and punitive damages are allowed for violation of equal protection against federal officials. States Marine Lines, Inc. v. Shultz, 498 F.2d 1146 (4th Cir. 1974).

Military commanders are personnally liable for violations of constitutionally protected rights of service personnel. Dinsman v. Wilkes, 53 U.S. 390; Alvarez v. Wilson, 431 F.Supp. 136 (N.D. Ill. 1977); Nixon v. Reeves, 65 Minn. 159; 67 N.W. 984 (1846); Crozman v. Callahan, 136 F.Supp. 466 (D.C. Okla. 1955).

CONCLUSION

The Petition for A Writ of Certiorari should be denied.

October 8, 1982

Respectfully submitted,

JOHN MURCKO
506 Fifteenth Street
Suite 300
Oakland, California 94612
Telephone: (415) 465-2241
Attorney for Respondents

No. 82-167

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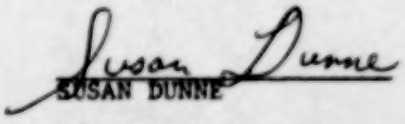
CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 1982, one copy of the Respondents' Brief In Opposition was mailed, postage prepaid to Rex E. Lee, Solicitor General, Department of Justice, Washington, D.C. 20530, counsel for petitioners. All parties required to be served have been served.



SUSAN DUNNE

506 Fifteenth Street
Suite 300
Oakland, CA 94612
Telephone: (415) 465-2241

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VERNON WALLACE, et al

Respondents.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AND DECLARATION IN SUPPORT THEREOF

JOHN MURCKO, ESQ.
506 15th Street, S. 300
Oakland, Cal. 94612
(415) 465-2241

Attorney For Respondent

No. 82-167

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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Respondents.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondents VERNON WALLACE, ROBERT LEMONS, G. SHANNON, C. HICKEY, and JAMES RICHARDSON move this court for an order permitting them to proceed in this court, with an opposition to The Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit filed by the United States Solicitor General on July 30, 1982, and in support thereof attaches the following declarations of the respondents.

Respondents' opposition to the petition for writ of certiorari is being filed with this motion and appellant's declaration.

Dated: October 7, 1982

JOHN MURCKO, Esq.
506 15th Street, Suite 300
Oakland, CA 94612
(415) 465-2241

No. 82-167

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

COMMANDER GEORGE C. CHAPPELL, et al.,

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Respondents.

DECLARATION OF CORNELIUS HICKEY IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

1. I, Cornelius Hickey, depose and say that I am one of the respondents in the above-entitled case, that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs, give security or to file printed briefs, I state that because of my poverty I am unable to pay the costs of said printed briefs or to give security thereof, that I believe that the decision of the United States Court of Appeal for the Ninth Circuit is without error and that the Supreme Court should not issue a Writ of Certiorari as prayed for by the petitioners.

2. I further swear that the responses to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

3. Are you presently employed? Yes. I am employed at the Mayflower Hotel, 405 Olive Way, Seattle, Washington, and earn $1,000. per month. I am also going to cooks school.

4. Have you received within the last twelve months any income from a business, profession, or other form of self employment or in the form of rent, interest, divdents or other source? No.

5. Do you have any cash or savings accounts or checkings accounts? I have $60 in savings.

6. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property? No.

7. List the persons who are dependent upon you for support and state your relationship to these persons. I furnish my mother Mrs. Hickey $150. per month.

8. My monthly expenses are listed below. My rent is $260, food $200, supportto my mother $150, telephone $60, utilities $50, tuition $90, books $60, transportation $60, clothing $70, and laundery $35.

I declare that the preceeding is true and correct. Executed in Oakland, California on October 8, 1982.

Cornelius Hickey
Cornelius Hickey
by John Mendes attorney in fact

State of California }
County of Alameda } ss.

On this the 8 day of October 19 82 before me,

Cynthia L. Gibbon

the undersigned Notary Public, personally appeared

John Mendes Attorney In Fact for Cornelius Hickey

OFFICIAL SEAL
CYNTHIA L. GIBBON
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 28, 1985

☑ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.

Cynthia L. Gibbon
Notary's Signature

GENERAL ACKNOWLEDGMENT FORM 7110052
NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • Woodland Hills, CA 91364

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DECLARATION OF JAMES RICHARDSON IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

1. I, James Richardson, depose and say that I am one of the respondents in the above-entitled case, that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs, give security or to file printed briefs, I state that because of my poverty I am unable to pay the costs of said printed briefs or to give security thereof, that I believe that the decision of the United States Court of Appeal for the Ninth Circuit is without error and that the Supreme Court should not issue a Writ of Certiorari as prayed for by the petitioners.

2. I further swear that the responses to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

3. Are you presently employed? Yes, I am presently employed by United States Postal Service, 902 Broadway, Nashville, Tennessee, and earn $1,200 per month.

4. Have you received within the last twelve months any income from a business, profession, or other form of self

employment or in the form of rent payments, interest, dividends, or other sources? No.

5. Do you own any cash or checking or savings account? No.

6. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property? Yes. I own a 1978 Fiat.

7. List the persons who are dependent upon you for support and state your relationship to these persons. I furnish $200 per month to my mother for support. Her name is Ruth Richardson.

8. List all of your expenses per month. My rent is $305, car payment is $135, food is $225, insurance is $50, auto repairs, gas and oil are $75, utilities are $30, telephone and dental are $50 and clothing is $75, and $200 for support.

9. I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury. Executed in Oakland, California on October 8, 1982.

James Richardson
JAMES RICHARDSON, Respondent
By John Munch
Attorney in Fact

State of California } ss.
County of Alameda }

On this the 8 day of October 19 82 before me,
Cynthia L. Gibbon
the undersigned Notary Public, personally appeared
John Munch, Attorney in Fact
for James Richardson

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.

Cynthia L. Gibbon
Notary's Signature

OFFICIAL SEAL
CYNTHIA L. GIBBON
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 25, 1985

GENERAL ACKNOWLEDGMENT FORM 7110552

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • Woodland Hills, CA 91

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Respondents.

DECLARATION OF ROBERT LEMONS IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

1. I, Robert Lemons, depose and say that I am one of the respondents in the above-entitled case, that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs, give security or to file printed briefs, I state that because of my poverty I am unable to pay the costs of said printed briefs or to give security thereof, that I believe that the decision of the United States Court of Appeal for the Ninth Circuit is without error and that the Supreme Court should not issue a Writ of Certiorari as prayed for by the petitioners.

2. I further swear that the responses to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

3. Are you presently employed? Yes, I am presently employed as a security guard at San Diego City Schools, 3550 Logan Avenue, San Diego, California. My salary is $601 per month. Also, I receive $348 from the Veterans Administration while attending school.

4. Have you received within the last twelve months any income from a business, profession, or other forms of self employment or in the form of rent payments, interest, dividends, or other sources? No.

5. Do you own any cash or checking or savings account? Yes. $10.00.

6. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property? Yes, a 1980 Chevrolet.

7. List the persons who are dependent upon you for support and state your relationship to these persons. I send $100 per month to my two daughters for support.

8. List all of your expenses per month. My rent is $225, car payment is $212, food is $100, utilities are $20, car insurance is $30, oil and gas and repairs are $100, monthly payment to Montgomery Wards is $20, and clothing is $25.

9. I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury. Executed in Oakland, California on October 8, 1982.

Robert Lemons
ROBERT LEMONS, Respondent
by John Mucko
Attorney in Fact

State of California
County of Alameda } ss.

On this the 8th day of October 1982, before me,
Cynthia L. Gibbon,
the undersigned Notary Public, personally appeared
John Mucko, Attorney in fact for
Robert Lemons,

☑ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) _____ subscribed to the within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.

OFFICIAL SEAL
CYNTHIA L. GIBBON
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 22, 1985

Cynthia L. Gibbon
Notary's Signature

GENERAL ACKNOWLEDGMENT FORM 7119052

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • Woodland Hills, CA 913

No. 82-167

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

COMMANDER GEORGE C. CHAPPELL, et al.,

Petitioners

v.

VERNON WALLACE, et al.,

Respondents.

DECLARATION OF VERNON WALLACE IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

1. I, Vernon Wallace, depose and say that I am the respondent in the above-entitled case, that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs, give security or to file printed briefs, I state that because of my poverty I am unable to pay the costs of said printed briefs or to give security thereof, that I believe that the decision of the United States Court of Appeal for the Ninth Circuit is without error and that the Supreme Court should not issue a Writ of Certiorari as prayed for by the petitioners.

2. I further swear that the responses to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

3. Are you presently employed? No. However, I am presently a student and receive $468.00 per month as a veteran. My last employer was Ultra Power, 8340 Highland View, Universal City, Texas where I was employed until December, 1981 at $1,000.00

per month.

4. Have you received within the last twelve months any income from a business, profession, or other forms of self employment or in the form of rent payments, interest, dividends, or other sources? No.

5. Do you own any cash or checking or savings account? No.

6. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property? No.

7. List the persons who are dependent upon you for support and state your relationship to these persons. My daughter, Puah Wallace.

8. List all of your expenses per month. My rent is $125, food $275, utilities $70, medical $120, auto expenses $150, school $100, insurance is $54, clothing is $75, babysitter is 120. My wife makes $600 per month.

9. I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury. Executed in Oakland, California on October 8, 1982.

Vernon Wallace
VERNON WALLACE, Respondent
by John Mendes
Attorney in Fact

State of California }
County of Alameda } ss.

On this the 8th day of October 19 82 before me,
Cynthia L. Gibbon
the undersigned Notary Public, personally appeared John Mendes, Attorney in Fact for
Vernon Wallace

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.

Cynthia L. Gibbon
Notary's Signature

OFFICIAL SEAL
CYNTHIA L. GIBBON
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 22, 1985

GENERAL ACKNOWLEDGMENT FORM 7116.052

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NO. 82-167

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

COMMANDER GEORGE C. CHAPPELL, et al

Petitioners,

v.

VERNON WALLACE, et al

Respondents.

DECLARATION OF JOHN MURCKO IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR RULE No. 28

1. I, John Murcko, depose and say; that I am the attorneys for the respondents above listed.

2. I state on information and belief that Mr. George Shannon unable to pay any fees in the above case and should be allowed to proceed in forma pauperis. It is my belief that he is not employed, that he does not have any assets, and that his income does not exceed his expenses.

3. The last time that I saw George Shannon was in the fall of 1979. At that time he was destitute and had to leave his apartment at 2450 C Street, San Diego, California. He was discharged from the U.S. Navy, was unemployed, and was without any skills.

4. It is reasonable to assume that his financial condition has not improved. as is similiar to the other petitioners.

5. I had the enclosed brief and motion mailed first class postage, prepaid in Oakland, California on October 8, 1982

addressed to the Clerk, Supreme Court of the United States, Washington, D.C.. It was mailed before the due date of October 10, 1982.

I declare that the preceding is true and correct under penalty of perjury. Executed in Oakland, California on October 8, 1982.

John Murcko
JOHN MURCKO

State of California
County of Alameda } ss.

On this the 8 day of October 19 82 before me,
Cynthia L. Gibbon
the undersigned Notary Public, personally appeared
John Murcko

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.

OFFICIAL SEAL
CYNTHIA L. GIBBON
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires August 31, 1985

Cynthia L. Gibbon
Notary's Signature

GENERAL ACKNOWLEDGMENT FORM 7110 REV

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